



Please Direct All Correspondence to Customer Number **20995**

### AMENDMENT / RESPONSE TRANSMITTAL

Applicant : Rex Allan Mason  
 App. No : 10/576,705  
 Filed : April 20, 2006  
 For : ANTI-FOAMING DEVICE  
 Examiner : Unassigned  
 Art Unit : Unknown

#### CERTIFICATE OF MAILING

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

November 28, 2007

*[Signature]* (Date)  
 Thomas R. Arno, Reg. No. 40,490

#### Mail Stop Amendment

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing in the above-identified application are the following enclosures:

- (X) Renewed Petition Under 37 C.F.R. Section 1.47(b)
- (X) Copy of Declaration and Power of Attorney.
- (X) Statutory Declaration.

The fee has been calculated as shown below:

The present application qualifies for Small Entity Status under 37 CFR 1.27.

FEE CALCULATION				
FEE TYPE		FEE CODE	CALCULATION	TOTAL
1 Month Extension	1.17(a)(1)	2251 (\$60)		\$65
			<b>TOTAL FEE DUE</b>	<b>\$65</b>

11/30/2007 HDESTA1 00000059 10576705

01 FC:2251 60.00 0P  
 02 FC:9998 5.00 0P

Adjustment date: 12/03/2007 HDESTA1  
 11/30/2007 HDESTA1 00000059 10576705  
 02 FC:9998 5.00 0P  
 Repln. Ref: 12/03/2007 HDESTA1 0013104700  
 DA#111410 Name/Number:10576705  
 FC: 9204 \$5.00 CR

**Please Direct All Correspondence to Customer Number 20995**

---

(X) A check in the amount of **\$65** to cover the Total Fee Due is enclosed.  
Extension of time is requested by payment of any extension fee.

(X) Return prepaid postcard.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.



---

Thomas R. Arno  
Registration No. 40,490  
Attorney of Record  
Customer No. 20,995  
(619) 235-8550

4586129  
112807



JAMES117.001APC

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Rex Allan Mason  
Appl. No. : 10/576,705  
Filed : April 20, 2006  
For : ANTI-FOAMING DEVICE  
Examiner : Unassigned  
Group Art Unit : Unknown

CERTIFICATE OF MAILING

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

November 28, 2007

(Date)

Thomas R. Arno, Reg. No. 40,490

RENEWED PETITION UNDER 37 C.F.R. SECTION 1.47(b)

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Decision on Petition Under 37 CFR 1.47(b) dated August 31, 2007, in which Examiner concluded that Petitioner's previous submission satisfied items 1, 3, and 4 and did not satisfy items 2, 5 and 6, please find attached the following documents:

1. A copy of the Declaration and Power of Attorney executed by the inventor. (Exhibit 1)
2. A Statutory Declaration stating that a court of competent jurisdiction in New Zealand would, by the weight of authority, recognize Petitioner as the owner of the inventions. (Exhibit 2)

Further attempts to obtain the required documentation required by the Decision on Petition of August 31, 2007 resulted in the execution of the Declaration and Power of Attorney on October 1, 2007. As noted above, a copy of the executed declaration is attached.

Even though an executed declaration has now been obtained, a memorandum setting forth the proprietary interest in the inventions of the 37 CFR 1.47(b) applicant is attached.

Appl. No. : 10/576,705  
Filed : April 20, 2006

Granting of the present petition is necessary to preserve the rights of the 37 CFP 1.47(b) applicant.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 11/28/07

By: 

Thomas R. Arno  
Registration No. 40,490  
Attorney of Record  
Customer No. 20,995  
(619) 235-8550

4500249  
110507

# EXHIBIT 1



## DECLARATION AND POWER OF ATTORNEY - USA PATENT APPLICATION

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I believe I am the original, first and sole inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled ANTI-FOAMING DEVICE the specification of which:

was described and claimed in PCT International Application No. PCT/NZ2004/000259 filed on October 15, 2004 and as amended under PCT Article 19 on \_\_\_\_\_ (if any) and/or under PCT Article 34 on \_\_\_\_\_ (if any).

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above;

I acknowledge the duty to disclose information which is material to the patentability of this application in accordance with Title 37, Code of Federal Regulations, § 1.56;

I hereby claim foreign priority benefits under Title 35, United States Code, § 119 of any foreign application(s) for patent, design or inventor's certificate or any PCT international application(s) listed below and have also identified below any foreign application(s) for patent, design or inventor's certificate or any PCT international application(s) designating at least one country other than the United States of America filed for the same subject matter having a filing date before that of the application(s) of which priority is claimed:

PRIOR FOREIGN APPLICATION(S)

COUNTRY (OR INDICATE IF PCT)	APPLICATION NUMBER	DATE OF FILING (day, month, year)	PRIORITY CLAIMED UNDER 35 U.S.C. § 119
New Zealand	529066	October 21, 2003	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
			<input type="checkbox"/> YES <input type="checkbox"/> NO

I hereby claim the benefit under Title 35, United States Code, § 120 of any United States application(s) listed below, and insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code § 112, I acknowledge the duty to disclose to the U.S. Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56, which became available between the filing date of the prior application and the national or PCT international filing date of this application:

Prior U.S.A. Application(s)

Application No.: \_\_\_\_\_ Filing Date: \_\_\_\_\_ Status: \_\_\_\_\_

POWER OF ATTORNEY: I hereby appoint the registrants of Knobbe, Martens, Olson & Bear, LLP, 2040 Main Street, Fourteenth Floor, Irvine, California 92614, Telephone (949) 760-0404, Customer No. 20,995.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made in information and belief are believed to be true; and further that those statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or first inventor: Rex Allan Mason

Inventor's signature Rex Allan Mason Day 01 Month 10 Year 2007

Residence (city and country): Hamilton, New Zealand  
AUCKLAND

Citizenship: New Zealand

Post Office Address: 31 Lanning Place, Hamilton 32000, New Zealand  
P.O.Box 34-843, BIRKENHEAD 1330,

Send Correspondence To:  
KNOBBE, MARTENS, OLSON & BEAR, LLP  
Customer No. 20,995

3278883  
010607

# EXHIBIT 2

IN THE MATTER OF United  
States of America Patent  
Application Nos. 10/576,705 and  
10/575,960

**STATUTORY DECLARATION**

I, CERI PETER KESTON WELLS of Hamilton, Barrister and Solicitor of the High Court of New Zealand and Registered Patent Attorney, solemnly and sincerely declare that:

**1.0 Introduction**

**1.1** Eliminator Holdings Limited ("EHL") is the Applicant in the following patent applications:

US Application No. 10/576,705

Anti-Foaming Device filed 20 April 2006, claiming a priority date of 21 October 2003 based on New Zealand Patent No. 529066; and

US Application No. 10/575,960

An Improved Fluid Treatment System filed 12 April 2006, claiming a priority date of 13 October 2003 based on New Zealand Patent No. 528893.

("the US Patent Applications")

**1.2** Rex Allan Mason ("the Inventor") is the inventor of the inventions generally described in the US Patent Applications ("the Inventions").

*CKW*  
*CKW*

- 1.3 EHL has provided the United States Patent and Trade Mark Office ("USPTO") with details of an Intellectual Property Agreement dated 16 February 2004 ("the IP Agreement") between EHL and the Inventor, from which EHL asserts that it has the required proprietary interest in the Inventions for EHL to be the applicant in respect of the US Patent Applications.
- 1.4 The IP Agreement does not specifically refer to the underlying priority patent applications, despite the fact that the priority patent applications was filed prior to the IP Agreement being signed. USPTO has therefore required that EHL demonstrate that it has a valid proprietary interest in the US Patent Applications and the Inventions.
- 1.5 Based on the facts of this matter, a court of competent jurisdiction in New Zealand would, by the weight of authority, recognise EHL as the owner of the Inventions.

## 2.0 Background

- 2.1 EHL was previously called "Vergence Holdings Limited" ("VHL").
- 2.2 The patent applications which EHL relies on for the priority dates relating to the US Patent Applications were as follows:

New Zealand Patent Application No. 529066  
Anti-Foaming Device, filed 21 October 2003; and

New Zealand Patent Application No. 528893  
An Improved Fluid Treatment System, filed 13 October 2003.

("the New Zealand Patent Applications")

- 2.3 The Inventor was fully aware that the New Zealand Patent Applications would be filed in the name of VHL, and the Inventor was actively involved in the preparation of patent specifications for the New Zealand Patent Applications.
- 2.4 At no time did the Inventor oppose the New Zealand Patent Applications or challenge EHL's right to own the New Zealand Patent Applications, the Inventions, or the intellectual property therein.

12

2.5 The New Zealand Patent Applications have now been granted and have issued in the name of EHL.

**3.0 The Assignment Agreement**

3.1 On 16 February 2004 (i.e. after the New Zealand Patent Applications were filed), VHL and the Inventor entered into the IP Agreement. A copy of the IP Agreement is attached to this Declaration and marked with the letter "A".

3.2 Pursuant to clause 1.0 of the IP Agreement, the parties agreed:

"Rex shall sell and Vergence shall purchase all intellectual property rights in the Eliminator, (including but not limited to prototypes, drawings, plant, and concepts) and related technology existing at the date of signing this agreement."

[In the Agreement, "Rex" refers to the Inventor, and "Eliminator" refers to the Invention.]

3.3 Pursuant to clause 2.0 of the IP Agreement, the parties agreed that:

"The purchase price for the intellectual property rights in the technology described above shall be \$1.00 payable upon the signing of this agreement. In addition, Vergence will grant to Rex the option to purchase 9100 shares at a price yet to be determined by the Vergence Board of Directors. The Board will determine the share price within 12 months of signing of this agreement and Rex will have the option to purchase the shares at this price for a period of two years, from the signing of this agreement. At the end of the two year period this option if not taken up by Rex will expire."

3.4 The sum of \$1.00 was paid to the Inventor and receipt was acknowledged by the Inventor in writing. A copy of that acknowledgement is attached and marked with the letter "B".

*[Handwritten signature]*

- 3.5 The share price referred to in clause 2.0 of the IP Agreement was fixed at \$1.00 per share on 16 February 2004. A copy of that resolution is attached and marked with the letter "C".
- 3.6 The Inventor subsequently agreed to purchase 9,100 shares in EHL's parent company, Vergence Limited ("VL"), in full satisfaction of the option to purchase set out in the IP Agreement. A copy of that agreement, dated 24 September 2004, is attached and marked with the letter "D".
- 3.7 The Inventor signed a declaration stating:

"I, Rex Allan Mason confirm that that I have disposed of my interest in the Intellectual Property in the Eliminator to Eliminator Holdings Limited (previously known as Vergence Holdings Limited) and confirm that I have no further personal rights to the Eliminator Intellectual Property".

A copy of that declaration is attached and marked with the letter "E".

#### **4.0 The Refusal to Sign**

- 4.1 Since early 2007 the Inventor has failed or refused to co-operate with EHL in relation to the US Patent Applications.
- 4.2 There is a dispute between a trust (of which the Inventor is a trustee) and VL. The Inventor has refused to cooperate with EHL in relation to the US Patent Applications and it is apparent this lack of cooperation is intended as a means of exercising leverage to settle the dispute between that trust and VL.

#### **5.0 The Issue in Relation to the Law in New Zealand**

- 5.1 The court of competent jurisdiction in New Zealand is the High Court of New Zealand.
- 5.2 Based on the weight of authority, the High Court of New Zealand would find that EHL had the required proprietary interest in the US Patent Applications.

JW

5.3 There is no issue that all the essential elements of a contract existed between the parties. The only issue is whether the parties intended the term "intellectual property in the Eliminator" in clause 1.0 of the IP Agreement to include the subject matter of the New Zealand Patent Applications. The answer to that question is "yes", for the reasons set out below.

5.4 When interpreting written contracts, courts in New Zealand will give a term its natural and ordinary meaning, having regard to the facts at the time of contracting: *Investors Compensation Scheme Ltd v West Bromich Building Society* [1998] 1 All ER 98 at 114 (HL); *Boat Park v Hutchinson* [1999] 2 NZLR 74 at 81-82 (CA).

5.5 In this case:

5.5.1 The natural meaning of the term "intellectual property" would include patent applications.

5.5.2 The "Eliminator" is the name which the parties used at the time of the IP Agreement, and continue to use, to describe the overall technology to which the Inventions and the New Zealand Patent Applications relate.

5.5.3 The New Zealand Patent Applications had already been filed at the time the IP Agreement was signed, with the full knowledge and co-operation of both parties.

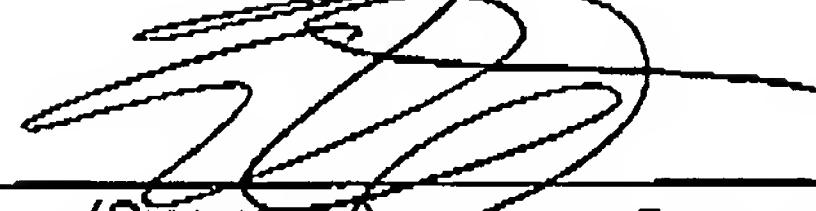
5.6 Therefore, both parties would have understood the term "intellectual property in the Eliminator" to include the Inventions, the New Zealand Patent Applications, the right to claim priority from the New Zealand Patent Applications, and any patent application filed anywhere in the world which claimed priority from the New Zealand Patent Applications.

5.7 Consequently, the High Court of New Zealand would, on the weight of authority, recognise EHL as the owner of the Inventions.

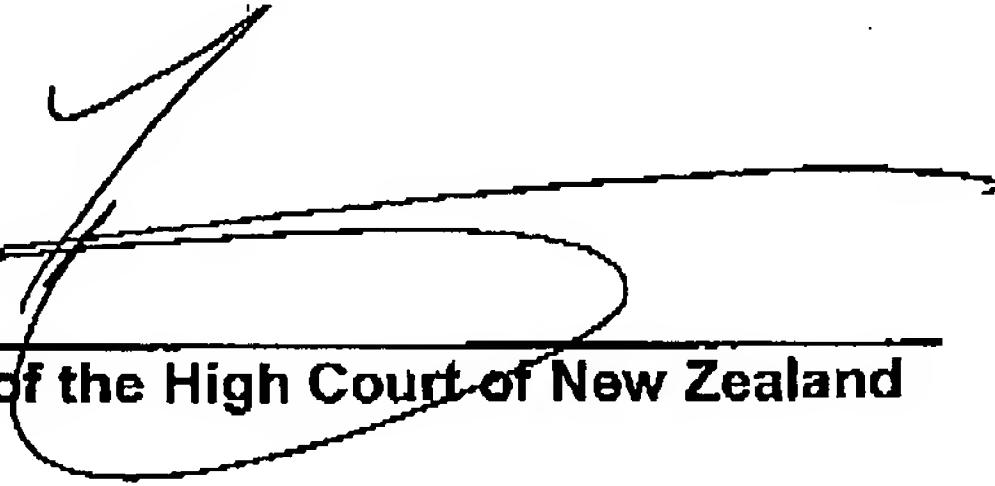


AND I MAKE this solemn declaration conscientiously believing the same to be true  
and by virtue of the Oaths and Declarations Act 1957.

Declared at Hamilton, New Zealand )  
This 29th day of October 2007 )

  
(Signature) C P K WELLS

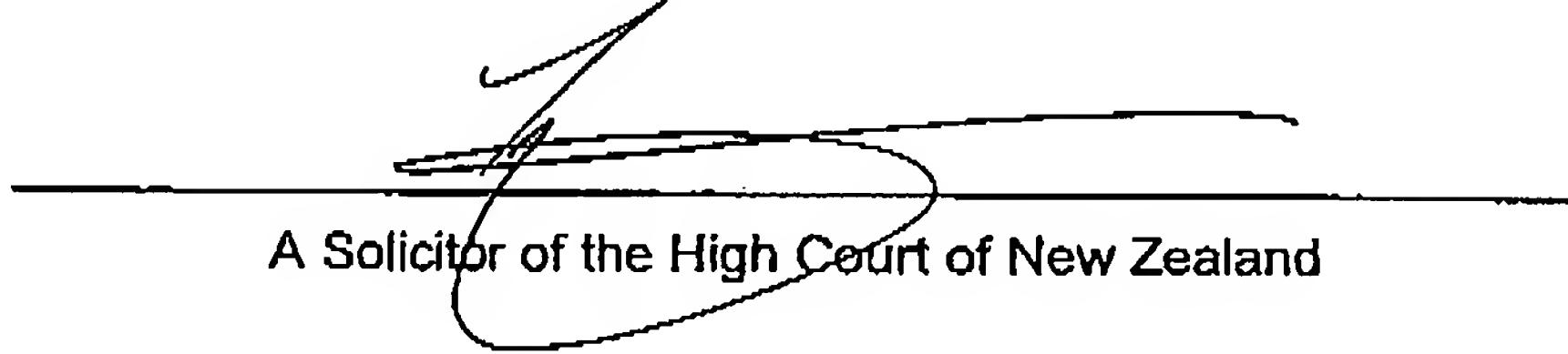
Before me:

  
A SOLICITOR OF THE HIGH COURT OF NEW ZEALAND

T. E. WALDEN  
BARRISTER AND SOLICITOR OF THE  
HIGH COURT OF NEW ZEALAND  
HAMILTON

**EXHIBIT NOTE**

This is the exhibit marked "A" referred to in the Statutory Declaration of **CERI PETER KESTON WELLS** made this 24<sup>th</sup> day of October 2007 before me:

  
A Solicitor of the High Court of New Zealand

DATED

16<sup>th</sup> February.

2003

BETWEEN  
VERGENCE HOLDINGS LIMITED  
("Vergence")

AND  
REX MASON  
("Rex")

---

AGREEMENT

---

*Beattie Rickman Legal*   
Cnr Bryce & Anglesea Streets  
HAMILTON

Telephone: (07) 839 0495  
Facsimile: (07) 839 1085

00308012\_JNW.m1:6b

THIS AGREEMENT is dated the

16th day of February

2004  
2003

*Office  
R.D.Y.  
R.M.*

## PARTIES

1. VERGENCE HOLDINGS LIMITED at Hamilton ("Vergence")
2. REX MASON of Hamilton, Manager ("Rex")

## BACKGROUND

- A. Vergence holds 100,000 shares in Vergence Technology Limited ("Company").
- B. Vergence has agreed to purchase intellectual property rights from Rex and give Rex the option to purchase shares in Vergence Technology Ltd, (or the company incorporated to commercialise Eliminator), in accordance with the terms of this agreement.

THIS AGREEMENT RECORDS that the parties agree as follows:

### 1.0 AGREEMENT TO SELL

Rex shall sell and Vergence shall purchase all intellectual property rights in the Eliminator, (including but not limited to prototypes, drawings, plant and concepts) and related technology existing at the date of signing of this agreement.

### 2.0 PURCHASE PRICE

The purchase price for the intellectual property rights in the technology described above shall be \$1.00 payable upon the signing of this agreement. In addition, Vergence will grant to Rex the option to purchase 9100 shares at a price yet to be determined by the Vergence Board of Directors. The Board will determine the share price within 12 months of signing of this agreement, and Rex will have the option to purchase the shares at this price for a period of two years, from the signing of this agreement. At the end of the two year period this option if not taken up by Rex will expire.

### 3.0 SETTLEMENT

- 3.1 The settlement date shall be the date that Rex exercises the option to purchase shares.
- 3.2 Upon settlement:
  - (a) Vergence will sign and deliver to Rex a share transfer in favour of Rex or his nominee for all the shares;

*10/1  
Rex FM*

(b) The shares shall pass to Rex free of encumbrances.

**4.0 SHAREHOLDER'S AGREEMENT**

- 4.1 Rex shall upon settlement, enter into and execute a shareholder's agreement in the form now attached.
- 4.2 Rex agrees to provide a waiver of the right to pre-emption on the sale of shares by a shareholder with regard to the sale of shares to Mark Loeffen from Vergence under the terms of the agreement for the sale of shares in the Company between Mark Loeffen and Vergence.

**5.0 OPTION TO PURCHASE FURTHER SHARES**

- 5.1 If, at any time before the expiration of a period of 2 years (or such longer period as may be agreed by the parties) from the date of this agreement, the Company sells 100 Eliminator units, then Vergence shall offer Rex an additional 9080 shares in Vergence Technology Ltd, (or the company incorporated to commercialise Eliminator).
- 5.2 The additional 9080 share option is conditional upon the first option, (2.0), being exercised.
- 5.3 'Sale' includes sales by an associated company, an agent of Vergence or a licensee.
- 5.4 The purchase price of the additional 9080 shares will be determined by the Vergence Board of Directors at the time of sale of the 100<sup>th</sup> Eliminator.
- 5.5 Rex acknowledges that he has had the opportunity to obtain independent legal and financial advice with regard to the terms of this agreement before signing.

EXECUTED as an Agreement.

SIGNED by VERGENCE HOLDINGS  
LIMITED

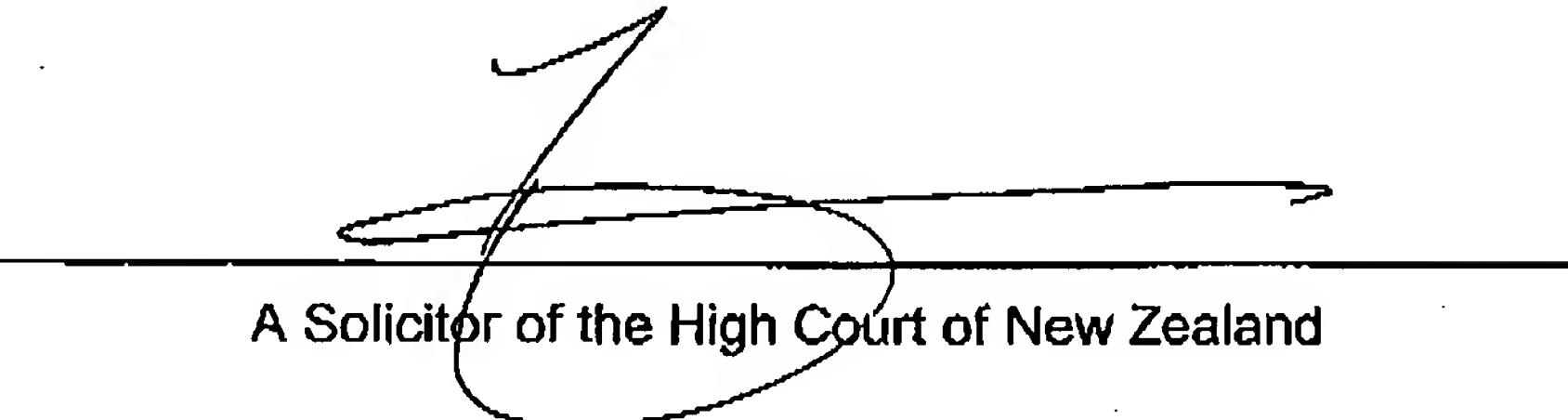
*R. D. Morgan*  
*1/16/03*

SIGNED by REX MASON

*Rex Mason*

**EXHIBIT NOTE**

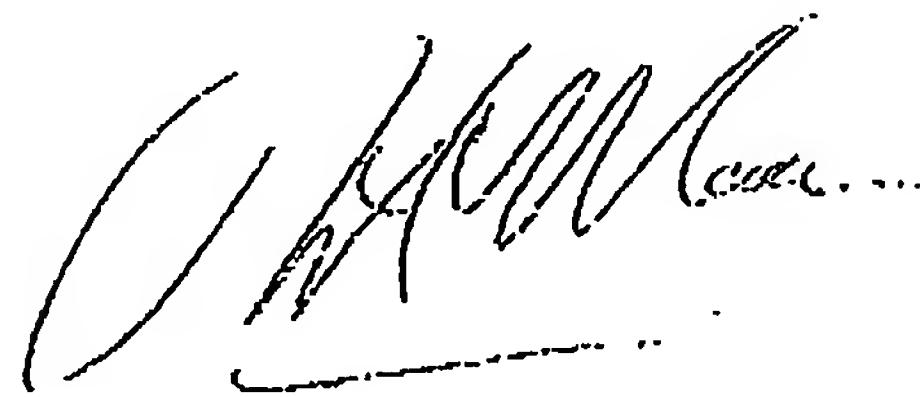
This is the exhibit marked "B" referred to in the Statutory Declaration of CERI PETER  
KESTON WELLS made this 29<sup>th</sup> day of October 2007  
before me:

  
A Solicitor of the High Court of New Zealand

"15"

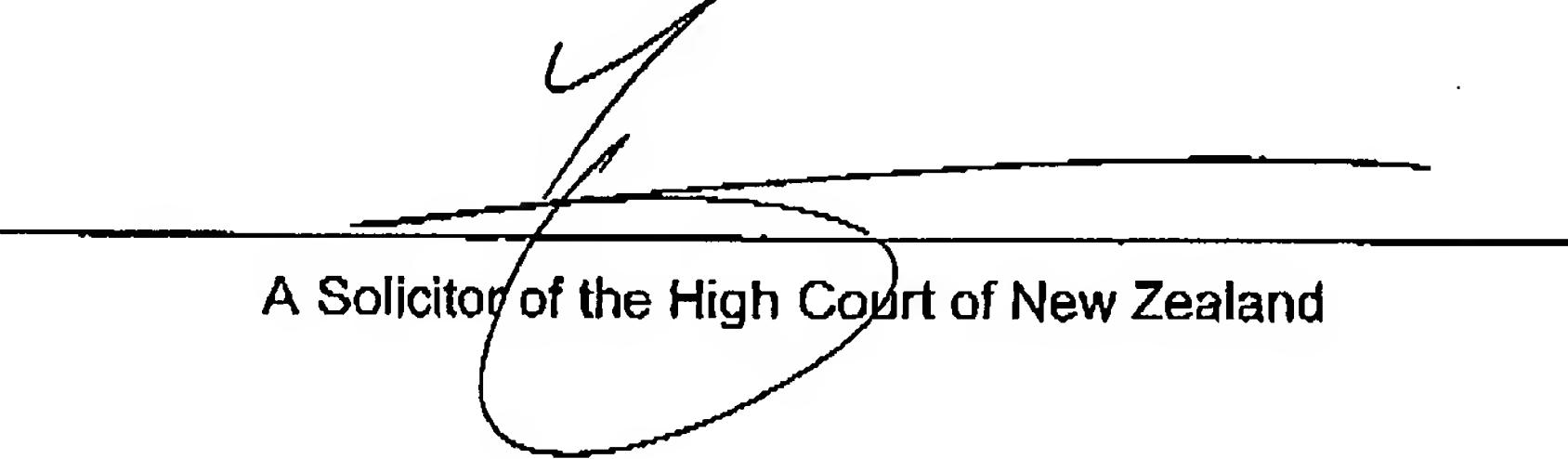
Rex Allan Manor, received from  
Vergence Holdings Ltd the sum of  
one dollar only (\$1)

On 16<sup>th</sup> February 2004



**EXHIBIT NOTE**

This is the exhibit marked "C" referred to in the Statutory Declaration of **CERI PETER KESTON WELLS** made this **29<sup>th</sup>** day of **October** **2007**  
before me:

  
A Solicitor of the High Court of New Zealand

On the 16<sup>th</sup> day of February 2004, with  
reference to the agreement between  
Rex Ailan Mason and Vergence Holdings Ltd  
(Vergence), the Vergence Board of Directors  
agree that the share purchase price as  
stated in clause 2.0 of the agreement  
for shares shall be \$1 for the  
parcel of 9100 shares, and with regard  
to clause 5.4, shall be \$1 for the  
parcel of 9080 shares.

Signed on behalf of the Vergence Board  
of Directors by

Pamela

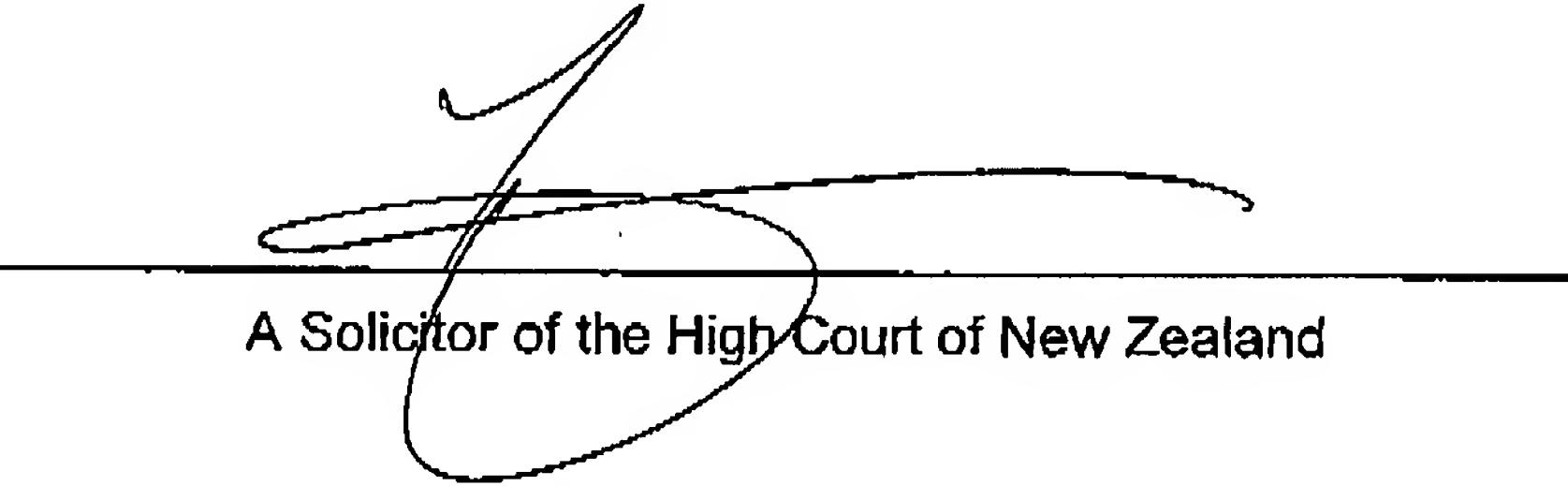
Pamela Suzanne Ross

R. D. Ferguson

Russell Douglas Ferguson

**EXHIBIT NOTE**

This is the exhibit marked "D" referred to in the Statutory Declaration of **CERI PETER KESTON WELLS** made this **29<sup>th</sup>** day of **October** **2007** before me:

  
A Solicitor of the High Court of New Zealand

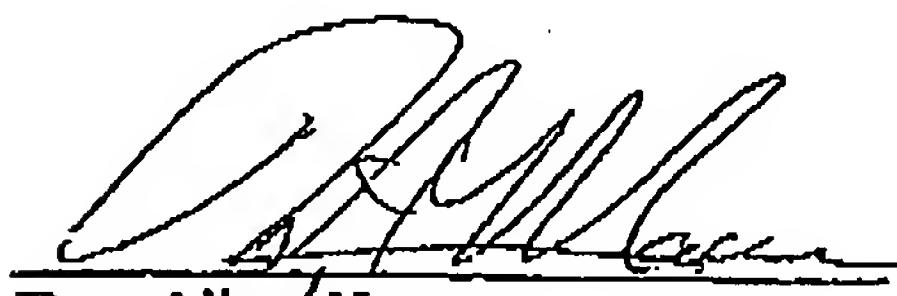
"S"

I, REX ALLAN MASON as trustee of the Maskay Trust ("Trust") agree to take a 9.1% shareholding in Vergence Limited, with immediate effect, in satisfaction of the Trust's entitlement to purchase 9,100 shares pursuant to an agreement dated 16 February 2004 ("Agreement"). I further agree that should 100 Eliminator units be sold, within two years of the date of the Agreement, the Trust will be entitled to choose to take up an additional 9.08% shareholding in either Vergence Limited or Vergence Technology Limited.

We, PHILIP WILLIAM MANSON, LESLIE JAMES ROA, PAMELA SUZANNA ROA and RUSSELL DOUGLAS FERGUSSON agree to REX ALLAN MASON exercising his option to take up shares in Vergence Limited, and confirm the Maskay Trust's right to take up 9.08% of the shares in either Vergence Limited or Vergence Technology Limited upon the sale of 100 Eliminator units, on the terms set out above.

DATED this 24<sup>th</sup> day of September 2004

SIGNED by:



Rex Allan Mason



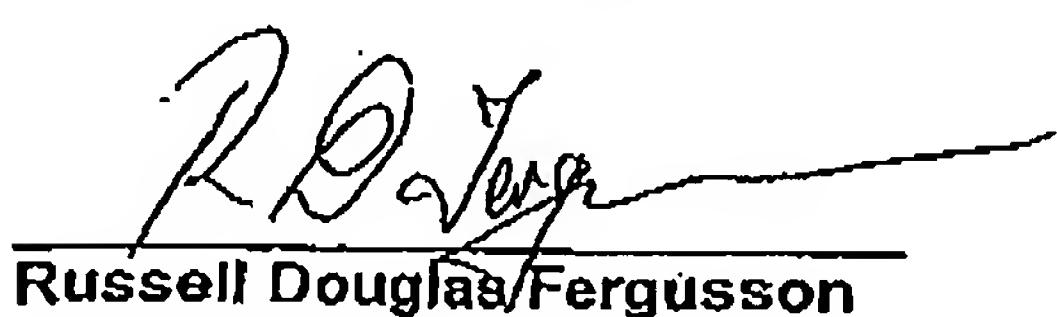
Philip William Manson



Leslie James Roa



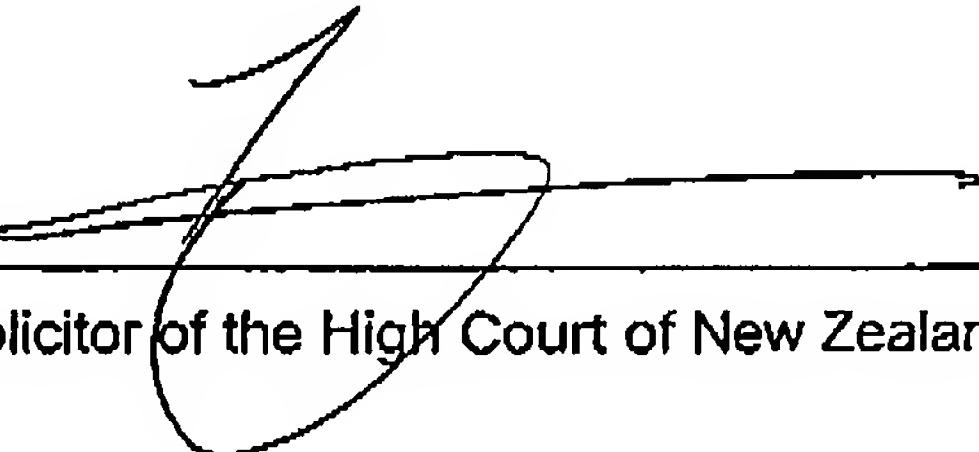
Pamela Suzanna Roa



Russell Douglas Fergusson

**EXHIBIT NOTE**

This is the exhibit marked "E" referred to in the Statutory Declaration of **CERI PETER KESTON WELLS** made this **29<sup>th</sup>** day of **October** **2007**  
before me:

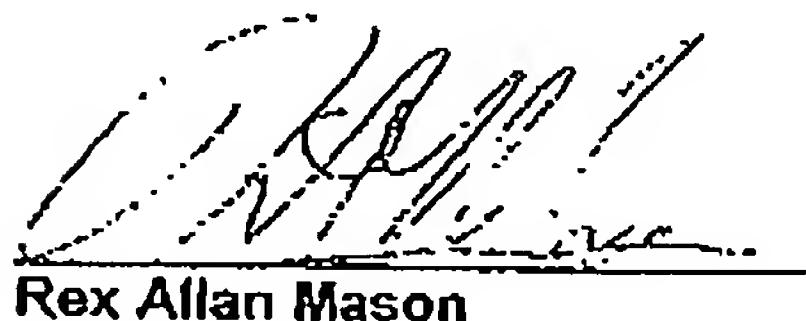
  
A Solicitor of the High Court of New Zealand

To: G D Barry Family Trust and M J Barry Family Trust

I, REX ALLAN MASON confirm that I have disposed of my interest in the Intellectual Property for the Eliminator to Eliminator Holdings Limited (Previously known as Vergence Holdings Limited) and confirm that I have no further personal rights to the Eliminator Intellectual Property.

DATED this 23<sup>rd</sup> day of September 2004

SIGNED by:



Rex Allan Mason